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11 ARISTA RECORDS LLC; WARNER BROS.  
12 RECORDS INC.; UMG RECORDINGS, INC.;  
13 VIRGIN RECORDS AMERICA, INC.; and SONY  
14 BMG MUSIC ENTERTAINMENT

15  
16  
17 ARISTA RECORDS LLC, a Delaware limited  
liability company; WARNER BROS.  
RECORDS INC., a Delaware corporation; UMG  
RECORDINGS, INC., a Delaware corporation;  
VIRGIN RECORDS AMERICA, INC., a  
California corporation; and SONY BMG  
MUSIC ENTERTAINMENT, a Delaware  
general partnership,

18 Plaintiffs,

19 v.

20 JOHN DOE,

21 Defendant.

E-filing

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FILED  
SEP 20 2007  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 607-04880  
11 CASE NO. JF  
12 HRL

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**MEMORANDUM OF LAW IN SUPPORT  
OF EX PARTE APPLICATION FOR  
LEAVE TO TAKE IMMEDIATE  
DISCOVERY**

1       **I. INTRODUCTION**

2                   Plaintiffs, record companies who own the copyrights in the most popular sound  
 3 recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a  
 4 third party Internet Service Provider ("ISP") to determine the true identity of Defendant John Doe  
 5 ("Defendant"), who is being sued for direct copyright infringement. Without such discovery,  
 6 Plaintiffs cannot identify Defendant, and thus cannot pursue their lawsuit to protect their copyrighted  
 7 works from repetitive, rampant infringement.<sup>1</sup>

8                   As alleged in the complaint, Defendant, without authorization, used an online media  
 9 distribution system (e.g., a peer-to-peer or "P2P" system) to download Plaintiffs' copyrighted works  
 10 and/or distribute copyrighted works to the public. See Declaration of Carlos Linares ("Linares  
 11 Decl."), ¶ 18 (attached hereto as Exhibit A). Although Plaintiffs do not know the true name of  
 12 Defendant,<sup>2</sup> Plaintiffs have identified Defendant by a unique Internet Protocol ("IP") address  
 13 assigned to Defendant on the date and at the time of Defendant's infringing activity. Id.  
 14 Additionally, Plaintiffs have gathered evidence of the infringing activities. Id. ¶¶ 14-15, 19.  
 15 Plaintiffs have downloaded a sample of several of the sound recordings Defendant illegally  
 16 distributed and have evidence of every file (numbering in the thousands) that Defendant illegally  
 17 distributed to the public. Id.

18                   Plaintiffs have identified the ISP that provided Internet access to Defendant by using  
 19 a publicly available database to trace the IP address for Defendant. Id. ¶¶ 12, 18. Here, the ISP is  
 20 California State Univ - Monterey Bay ("Cal. State - Monterey"). Id. When given a Defendant's IP  
 21 address and the date and time of infringement, an ISP quickly and easily can identify the name and  
 22 address of a Doe Defendant (*i.e.*, the ISP's subscriber) because that information is contained in the  
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 25                   <sup>1</sup> Because Plaintiffs do not currently know the identity of the Defendant, Plaintiffs cannot  
 26 ascertain the Defendant's position on this *Ex Parte* Application.

27                   <sup>2</sup> When using a P2P system (e.g., Ares, eDonkey, Gnutella, BitTorrent, or DirectConnect), a  
 28 Defendant typically uses monikers, or user names, and not his true name. Linares Decl., ¶ 10.  
 Plaintiffs have no ability to determine a Defendant's true name other than by seeking the information  
 from the ISP. Id. ¶¶ 10, 16.

1 ISP's subscriber activity log files. Id. ¶ 16.<sup>3</sup> Plaintiffs' experience is that ISPs typically keep log  
 2 files of subscriber activities for only limited periods of time – which can range from as short as a few  
 3 days, to a few months – before erasing the data. Id. ¶ 24. Plaintiffs alert the ISP to the existence of  
 4 the copyright claims shortly after identifying the infringing activity and ask the ISP to maintain the  
 5 log files.

6 Plaintiffs now seek leave of the Court to serve limited, immediate discovery on Cal.  
 7 State - Monterey to identify Defendant. Plaintiffs intend to serve a Rule 45 subpoena on Cal. State -  
 8 Monterey seeking documents that identify Defendant's true name, current (and permanent) addresses  
 9 and telephone numbers, e-mail addresses, and Media Access Control ("MAC") addresses. Once  
 10 Plaintiffs learn Defendant's identifying information, Plaintiffs will attempt to contact Defendant and  
 11 attempt to resolve the dispute. If the dispute is not resolved and it is determined that it would be  
 12 more appropriate to litigate the copyright infringement claims in another jurisdiction, Plaintiffs will  
 13 dismiss the present lawsuit and re-file in the appropriate jurisdiction. Without the ability to obtain  
 14 the Defendant's identifying information, however, Plaintiffs may never be able to pursue their  
 15 lawsuit to protect their copyrighted works from repeated infringement. Id. ¶ 24. Moreover, the  
 16 infringement may be ongoing such that immediate relief is necessary. Thus, the need for the limited,  
 17 immediate discovery sought in this *Ex Parte* Application is critical.

## 19 II. BACKGROUND

20 The Internet and P2P networks have spawned an illegal trade in copyrighted works.  
 21 See MGM Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 923 (U.S. 2005). By downloading P2P  
 22 software, and logging onto a P2P network, an individual can upload (distribute) or download (copy),  
 23 without authorization, countless copyrighted music and video files to or from any other P2P network  
 24 user worldwide. See id. at 920 (detailing the process used by infringers to download copyrighted

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26 <sup>3</sup> ISPs own or are assigned certain blocks or ranges of IP addresses. A subscriber gains  
 27 access to the Internet through an ISP after setting up an account with the ISP. An ISP then assigns a  
 28 particular IP address in its block or range to the subscriber when that subscriber goes "online." After  
 reviewing the subscriber activity logs (which contain the assigned IP addresses), an ISP can identify  
 its subscribers by name. Linares Decl., ¶ 16.

1 works); A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014 (9th Cir. 2001) (stating that  
 2 infringers use P2P networks to copy and distribute copyrighted works); Universal City Studios, Inc.  
 3 v. Reimerdes, 111 F. Supp. 2d 294, 331 (S.D.N.Y.), aff'd sub nom., Universal City Studios, Inc. v.  
 4 Corley, 273 F.3d 429 (2d Cir. 2001) (describing a viral system, in which the number of infringing  
 5 copies made available multiplies rapidly as each user copying a file also becomes a distributor of  
 6 that file). Until enjoined, Napster was the most notorious online media distribution system.  
 7 Grokster, 545 U.S. at 924. Notwithstanding the Napster Court's decision, similar online media  
 8 distribution systems emerged that have attempted to capitalize on the growing illegal market that  
 9 Napster fostered. These include Ares, KaZaA, eDonkey, BitTorrent, DirectConnect, and Gnutella,  
 10 among others. Linares Decl., ¶ 6. Despite the continued availability of such systems, there is no  
 11 dispute that the uploading and downloading of copyrighted works without authorization is copyright  
 12 infringement. Napster, 239 F.3d at 1014-15; In re Aimster Copyright Litig., 334 F.3d 643 (7th Cir.  
 13 2003), cert. denied, 124 S. Ct. 1069 (2004). Nonetheless, at any given moment, millions of people  
 14 illegally use online media distribution systems to upload or download copyrighted material. Linares  
 15 Decl., ¶ 6. More than 2.6 *billion* infringing music files are downloaded monthly. L. Grossman, *It's*  
 16 *All Free*, Time, May 5, 2003, at 60-69.

18 The propagation of illegal digital copies over the Internet significantly harms  
 19 copyright owners, and has had a particularly devastating impact on the music industry. Linares  
 20 Decl., ¶ 9. The RIAA member companies lose significant revenues on an annual basis due to the  
 21 millions of unauthorized downloads and uploads of well-known recordings that are distributed on  
 22 P2P networks. Id. ¶ 9. Evidence shows that the main reason for the precipitous drop in revenues is  
 23 that individuals are downloading music illegally for free, rather than buying it. See In re Aimster  
 24 Copyright Litig., 334 F.3d at 645.

25 **III. ARGUMENT**

26 Courts, including this circuit, routinely allow discovery to identify "Doe" defendants.  
 27 See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (error to dismiss unnamed  
 28 defendants given possibility that identity could be ascertained through discovery); Valentin v.

1 Dinkins, 121 F.3d 72, 75-76 (2d Cir. 1997) (vacating dismissal; *pro se* plaintiff should have been  
 2 permitted to conduct discovery to reveal identity of the defendant); Dean v. Barber, 951 F.2d 1210,  
 3 1215 (11th Cir. 1992) (error to deny the plaintiff's motion to join John Doe defendant where identity  
 4 of John Doe could have been determined through discovery); Munz v. Parr, 758 F.2d 1254, 1257  
 5 (8th Cir. 1985) (error to dismiss claim merely because the defendant was unnamed; "Rather than  
 6 dismissing the claim, the court should have ordered disclosure of the Officer Doe's identity");  
 7 Maclin v. Paulson, 627 F.2d 83, 87 (7th Cir. 1980) (where "party is ignorant of defendants' true  
 8 identity . . . plaintiff should have been permitted to obtain their identity through limited discovery").

9  
 10 Indeed, in similar copyright infringement cases brought by Plaintiffs, and/or other  
 11 record companies, against Doe defendants for infringing copyrights over P2P networks, many  
 12 courts, including this Court, have granted Plaintiffs' motions for leave to take expedited discovery.

13 See, e.g., Order, Maverick Recording Co. v. Does 1-4, Case No. C-04-1135 MMC (N.D. Cal. April  
 14 28, 2004); Order, Arista Records LLC v. Does 1-16, No. 07-1641 LKK EFB (E.D. Cal. Aug. 23,  
 15 2007); Order, Sony BMG Music Ent't v. Does 1-16, No. 07-cv-00581-BTM-AJB (S.D. Cal. Apr. 19,  
 16 2007); Order, UMG Recordings, Inc. v. Does 1-2, No. CV04-0960 (RSL) (W.D. Wash. May 14,  
 17 2004); Order, Loud Records, LLC v. Does 1-5, No. CV-04-0134-RHW (E.D. Wash. May 10, 2004);  
 18 Order, London-Sire Records, Inc. v. Does 1-4, No. CV 04-1962 ABC (AJWx) (C.D. Cal. Apr. 2,  
 19 2004); Order, Interscope Records. v. Does 1-4, No. CV-04-131 TUC-JM (D. Ariz. Mar. 25, 2004)  
 20 (true and correct copies of these Orders are attached hereto as Exhibit B). This Court should not  
 21 depart from its well-reasoned decisions, or the well-reasoned decisions of other courts that have  
 22 addressed this issue directly.

23  
 24 Courts allow parties to conduct expedited discovery in advance of a Rule 26(f)  
 25 conference where the party establishes "good cause" for such discovery. See UMG Recordings,  
 26 Inc., 2006 U.S. DIST. LEXIS 32821 (N.D. Cal. Mar. 6, 2000); Qwest Comm. Int'l, Inc. v.  
 27 WorldQuest Networks, Inc., 213 F.R.D. 418, 419 (D. Colo. 2003); Entertainment Tech. Corp. v.  
 28 Walt Disney Imagineering, No. Civ. A. 03-3546, 2003 WL 22519440, at \*4 (E.D. Pa. Oct. 2, 2003)  
 (applying a reasonableness standard); Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273,

1 275-76 (N.D. Cal. 2002); Yokohama Tire Corp. v. Dealers Tire Supply, Inc., 202 F.R.D. 612, 613-  
 2 14 (D. Ariz. 2001) (applying a good cause standard). Plaintiffs easily have met this standard.

3 First, good cause exists where, as here, the complaint alleges claims of infringement.  
 4 See Semitool, 208 F.R.D. at 276; Qwest Comm., 213 F.R.D. at 419 (“The good cause standard may  
 5 be satisfied . . . where the moving party has asserted claims of infringement and unfair  
 6 competition.”); Benham Jewelry Corp. v. Aron Basha Corp., No. 97 CIV 3841, 1997 WL 639037, at  
 7 \*20 (S.D.N.Y. Oct. 14, 1997). This is not surprising, since such claims necessarily involve  
 8 irreparable harm to the plaintiff. 4 Melville B. Nimmer & David Nimmer, Nimmer On Copyright  
 9 § 14.06[A], at 14-103 (2003); see also Taylor Corp. v. Four Seasons Greetings, LLC, 315 F.3d 1034,  
 10 1042 (8th Cir. 2003); Health Ins. Ass’n of Am. v. Novelli, 211 F. Supp. 2d 23, 28 (D.D.C. 2002) (“A  
 11 copyright holder [is] presumed to suffer irreparable harm as a matter of law when his right to the  
 12 exclusive use of copyrighted material is invaded.”) (quotations and citations omitted); ABKCO  
 13 Music, Inc. v. Stellar Records, Inc., 96 F.3d 60, 66 (2d Cir. 1996).

15 Second, good cause exists here because there is very real danger the ISP will not long  
 16 preserve the information that Plaintiffs seek. As discussed above, ISPs typically retain user activity  
 17 logs containing the information sought for only a limited period of time before erasing the data.  
 18 Linares Decl., ¶ 24. If that information is erased, Plaintiffs will have **no** ability to identify  
 19 Defendant, and thus will be unable to pursue their lawsuit to protect their copyrighted works. Id.  
 20 Where “physical evidence may be consumed or destroyed with the passage of time, thereby  
 21 disadvantaging one or more parties to the litigation,” good cause for expedited discovery exists. See  
 22 Qwest Comm., 213 F.R.D. at 419; Pod-Ners, LLC v. Northern Feed & Bean, 204 F.R.D. 675, 676  
 23 (D. Colo. 2002) (allowing the plaintiff expedited discovery to inspect “beans” in the defendant’s  
 24 possession because the beans might no longer be available for inspection if discovery proceeded in  
 25 the normal course).

26 Third, good cause exists because the narrowly tailored discovery requests do not  
 27 exceed the minimum information required to advance this lawsuit and will not prejudice Defendant.  
 28 See Semitool, 208 F.R.D. at 276 (“Good cause may be found where the need for expedited

1 discovery, in consideration of the administration of justice, outweighs the prejudice to the  
 2 responding party.”). Plaintiffs seek immediate discovery to identify Defendant; information that  
 3 may be erased very soon. Plaintiffs (who continue to be harmed by Defendant’s copyright  
 4 infringement, Linares Decl., ¶ 9), cannot wait until after the Rule 26(f) conference (ordinarily a  
 5 prerequisite before propounding discovery) because there are no known defendants with whom to  
 6 confer (and thus, no conference is possible). There is no prejudice to Defendant because Plaintiffs  
 7 merely seek information to identify Defendant and to serve him, and Plaintiffs agree to use the  
 8 information disclosed pursuant to their subpoenas only for the purpose of protecting their rights  
 9 under the copyright laws.

10                  Fourth, courts regularly grant expedited discovery where such discovery will  
 11 “substantially contribute to moving th[e] case forward.” Semitool, 208 F.R.D. at 277. Here, the  
 12 present lawsuit cannot proceed without the limited, immediate discovery Plaintiffs seek because  
 13 there is no other information Plaintiffs can obtain about Defendant without discovery from the ISP.  
 14 As shown by the Declaration of Carlos Linares, Plaintiffs already have developed a substantial case  
 15 on the merits against each infringer. Plaintiffs’ complaint alleges a *prima facie* claim for direct  
 16 copyright infringement. Plaintiffs have alleged that they own and have registered the copyrights in  
 17 the works at issue, and that Defendant copied or distributed those copyrighted works without  
 18 Plaintiffs’ authorization. See Complaint. These allegations state a claim of copyright infringement.  
 19 Nimmer On Copyright § 31.01, at 31-3 to 31-7; Feist Publications, Inc. v. Rural Tel. Serv. Co., 499  
 20 U.S. 340, 361 (1991). In addition, Plaintiffs have copies of a sample of several of the sound  
 21 recordings that Defendant illegally distributed to the public and have evidence of every file that  
 22 Defendant illegally distributed to the public. See Complaint Ex. A; Linares Decl., ¶¶ 18-19. This  
 23 more complete list shows thousands of files, many of them sound recordings (MP3 files) that are  
 24 owned by, or exclusively licensed to, Plaintiffs. See Linares Decl., ¶ 19. Plaintiffs believe that  
 25 virtually all of the sound recordings have been downloaded and/or distributed to the public without  
 26 permission or consent of the respective copyright holders. Id. Absent limited, immediate discovery,  
 27 Plaintiffs will be unable to obtain redress for any of this infringement.

1                   Finally, Plaintiffs request that the Court make clear that Cal. State - Monterey's  
2 response to the subpoena is consistent with its obligations under the Family Educational Rights and  
3 Privacy Act, 20 U.S.C. 1232g ("FERPA"). Though FERPA generally prohibits disclosure of certain  
4 records by federally-funded educational institutions, it expressly provides that information can be  
5 disclosed pursuant to court order. *See* 20 U.S.C. § 1232g(b)(2)(B). While Plaintiffs do not believe  
6 FERPA prevents the disclosure of the information requested in the subpoena,<sup>4</sup> universities and  
7 colleges have expressed concern about their obligations under FERPA, and some have taken the  
8 position that a court order is required before they will disclose subscriber information. Hence,  
9 Plaintiffs seek an appropriate order explicitly authorizing Cal. State - Monterey to comply with the  
10 subpoena.

11                   If the Court grants this Ex Parte Application, Plaintiffs will serve a subpoena on Cal.  
12 State - Monterey requesting documents that identify the true name and other information about  
13 Defendant within 15 business days. Cal. State - Monterey then will be able to notify its subscriber  
14 that this information is being sought, and Defendant will be able to raise any objections before this  
15 Court in the form of a motion to quash prior to the return date of the subpoena. Thus, to the extent  
16 that Defendant wishes to object, he or she will be able to do so.

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27                   <sup>4</sup> Plaintiffs do not concede that FERPA prevents California State Univ - Monterey Bay, from  
28 disclosing the type of information being requested by Plaintiffs, but believe that a properly framed  
court order will make resolution of that issue unnecessary.

1 IV. CONCLUSION

2 For the foregoing reasons, the Court should grant the *Ex Parte* Application and enter  
3 an Order substantially in the form of the attached Proposed Order.

4

5 Dated: September 20, 2007

HOLME ROBERTS & OWEN LLP

6

7 By: 

8 MATTHEW FRANKLIN JAKSA  
9 Attorney for Plaintiffs  
10 ARISTA RECORDS LLC; WARNER  
11 BROS. RECORDS INC.; UMG  
12 RECORDINGS, INC.; VIRGIN  
13 RECORDS AMERICA, INC.; and SONY  
14 BMG MUSIC ENTERTAINMENT

**EXHIBIT A**

**EXHIBIT A**

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RECORDS INC.; UMG RECORDINGS, INC.;  
VIRGIN RECORDS AMERICA, INC.; and  
SONY BMG MUSIC ENTERTAINMENT

UNITED STATES DISTRICT COURT

**NORTHERN DISTRICT OF CALIFORNIA**

## SAN FRANCISCO DIVISION

ARISTA RECORDS LLC, a Delaware limited liability company; WARNER BROS. RECORDS INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; and SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership.,

**DECLARATION OF CARLOS  
LINARES IN SUPPORT OF *EX PARTE*  
APPLICATION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY**

Plaintiff.

v.

JOHN DOE.

Defendant

1  
2 I, Carlos Linares, have personal knowledge of the facts stated below and, under penalty  
3 of perjury, hereby declare:

4 1. I am Vice President, Anti-Piracy Legal Affairs for the Recording Industry  
5 Association of America, Inc. ("RIAA"), where I have been employed for over six years. My office is  
6 located at 1025 F Street, N.W., 10<sup>th</sup> Floor, Washington, DC 20004. I submit this Declaration in  
7 support of Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery.

8 2. As Vice President, Anti-Piracy Legal Affairs, I am responsible for evaluating  
9 and contributing to online strategies for the RIAA, including oversight of the investigations into online  
10 infringement of copyrighted sound recordings. As such, this Declaration is based on my personal  
11 knowledge, and if called upon to do so, I would be prepared to testify as to its truth and accuracy.

12 **The RIAA's Role in Protecting Its Member Recording Industry Companies From Copyright  
Infringement**

14 3. The RIAA is a not-for-profit trade association whose member record companies  
15 create, manufacture, and/or distribute approximately ninety percent of all legitimate sound recordings  
16 produced and sold in the United States. The RIAA's member record companies comprise the most  
17 vibrant national music industry in the world. A critical part of the RIAA's mission is to assist its  
18 member companies in protecting their intellectual property in the United States and in fighting against  
19 online and other forms of piracy. All of the Plaintiffs in this action are members of the RIAA.

20 4. As part of that process, the RIAA, on behalf of its members, retains a variety of  
21 services from outside vendors to assist with its investigation of the unauthorized reproduction and  
22 distribution of copyrighted sound recordings online.

23 **The Internet and Music Piracy**

24 5. The Internet is a vast collection of interconnected computers and computer  
25 networks that communicate with each other. It allows hundreds of millions of people around the world  
26 to communicate freely and easily and to exchange ideas and information, including academic research,  
27

1 literary works, financial data, music, movies, graphics, and an unending and ever-changing array of  
2 other data. Unfortunately, the Internet also has afforded opportunities for the wide-scalc piracy of  
3 copyrighted sound recordings and musical compositions. Once a sound recording has been  
4 transformed into an unsecured digital format, it can be copied further and distributed an unlimited  
5 number of times over the Internet, without significant degradation in sound quality.

6. Much of the unlawful distribution of copyrighted sound recordings over the  
7 Internet occurs via “peer-to-peer” (“P2P”) file copying networks or so-called online media distribution  
8 systems. The most notorious example of such a system was Napster, which was enjoined by a federal  
9 court. Notwithstanding the court’s decision enjoining Napster, similar online media distribution  
10 systems emerged and attempted to capitalize on the growing illegal market that Napster fostered.  
11 These include KaZaA, eDonkey, iMesh, Ares, BitTorrent, DirectConnect, and Gnutella, among others.  
12 To this day, some P2P networks continue to operate and to facilitate widespread copyright piracy. At  
13 any given moment, millions of people illegally use online media distribution systems to upload or  
14 download copyrighted material.

15. P2P networks, at least in their most popular form, refer to computer systems or  
16 processes that enable Internet users to: (1) make files (including audio recordings) stored on a  
17 computer available for copying by other users; (2) search for files stored on other users’ computers;  
18 and (3) transfer exact copies of files from one computer to another via the Internet. P2P networks  
19 enable users who otherwise would have no connection with, or knowledge of, each other to offer to  
20 each other for distribution and copying files off of their personal computers, to provide a sophisticated  
21 search mechanism by which users can locate these files for downloading, and to provide a means of  
22 effecting downloads.

23. The major record companies generally have not authorized their copyrighted  
24 sound recordings to be copied or distributed in unsecured formats by means of P2P networks. Thus,  
25 the vast majority of the content that is copied and distributed on P2P networks is unauthorized by the  
26 copyright owner – that is, the distribution violates the copyright laws.  
27

1           9.       The scope of online piracy of copyrighted works cannot be underestimated. The  
2 RIAA member companies lose significant revenues on an annual basis due to the millions of  
3 unauthorized downloads and uploads of well-known recordings that are distributed on P2P networks  
4 by infringers who, in virtually all cases, have the ability to maintain their anonymity to all but the  
5 Internet Service Provider ("ISP") they use to supply them with access to the Internet.

6           10.      The persons who commit infringements by using the P2P networks are, by and  
7 large, anonymous to Plaintiffs. A person who logs on to a P2P network is free to use any alias (or  
8 computer name) whatsoever, without revealing his or her true identity to other users. Thus, Plaintiffs  
9 can observe the infringement occurring on the Internet, but do not know the true names or mailing  
10 addresses of those individuals who are committing the infringement.

11           **The RIAA's Identification of Copyright Infringers**

13           11.      In order to assist its members in combating copyright piracy, the RIAA retained  
14 a third-party investigator, MediaSentry, Inc. ("MediaSentry"), to conduct searches of the Internet, as  
15 well as file-copying services, for infringing copies of sound recordings whose copyrights are owned by  
16 RIAA members. A search can be as simple as logging onto a P2P network and examining what files  
17 are being offered by others logged onto the network. In gathering evidence of copyright infringement,  
18 MediaSentry uses the same functionalities that are built into P2P programs that any user of the  
19 software can use on the network.

20           12.      Users of P2P networks who distribute files over a network can be identified by  
21 using Internet Protocol ("IP") addresses because the unique IP address of the computer offering the  
22 files for distribution can be captured by another user during a search or a file transfer. Users of P2P  
23 networks can be identified by their IP addresses because each computer or network device (such as a  
24 router) that connects to a P2P network must have a unique IP address within the Internet to deliver files  
25 from one computer or network device to another. Two computers cannot effectively function if they  
26 are connected to the Internet with the same IP address at the same time. This is analogous to the  
27 telephone system where each location has a unique number. For example, in a particular home, there

1 may be three or four different telephones, but only one call can be placed at a time to or from that  
2 home. Each computer or network device is connected to a network that is administered by an  
3 organization like a business, ISP, college, or university. Each network, in turn, is analogous to an area  
4 code. The network provider maintains a log of IP address allocations. An IP address can be associated  
5 with an organization such as an ISP, business, college, or university, and that organization can identify  
6 the P2P network user associated with the specified IP address.

7       13. MediaSentry finds individuals using P2P networks to share music files over the  
8 Internet. Just as any other user on the same P2P networks as these individuals would be able to do,  
9 MediaSentry is able to detect the infringement of copyrighted works and identify the users' IP  
10 addresses because the P2P software being used by those individuals has file-sharing features enabled.

11       14. For each suspected infringer, MediaSentry downloads a number of the music  
12 files that the individual is offering to other users on the P2P network. Those music files for each such  
13 individual are listed in Exhibit A to the Complaint. MediaSentry assigns an identification number to  
14 each individual for which it detects copyright infringement and gathers additional evidence for each  
15 individual, such as metadata accompanying each file being disseminated that demonstrates that the  
16 user is engaged in copyright infringement. That evidence includes download data files that show for  
17 each music file the source IP address, user logs that include a complete listing of all files in the  
18 individual's share folder at the time, and additional data that track the movement of the files through  
19 the Internet.

20       15. After MediaSentry collects the evidence of infringement, the RIAA engages in a  
21 painstaking process to verify whether each individual was infringing. That process relies on human  
22 review of evidence supporting the allegation of infringement. For each suspected infringer, the RIAA  
23 reviews a listing of the music files that the user has offered for download by others from his or her  
24 computer in order to determine whether they appear to be copyrighted sound recordings. The RIAA  
25 also listens to the downloaded music files from these users in order to confirm that they are, indeed,  
26 illegal copies of sound recordings whose copyrights are owned by RIAA members. Exhibit A to the  
27

1 Complaint lists the details of these downloaded music files. In my role as Vice President, Anti-Piracy,  
2 I provide oversight over the review of the lists contained in Exhibit A to the Complaint and hereby  
3 attest to the veracity of those lists. The RIAA also reviews the other evidence collected by  
4 MediaSentry.

5 **The Subpoena Process to Identify Copyright Infringers**

6  
7 16. The RIAA frequently has used the subpoena processes of Federal Rule of Civil  
8 Procedure 45 and the Digital Millennium Copyright Act ("DMCA") to obtain the names of infringers  
9 from ISPs. The RIAA typically has included in their subpoenas to ISPs an IP address and a date and  
10 time on which the RIAA, through its agent, MediaSentry, observed use of the IP address in connection  
11 with allegedly infringing activity. In some instances, providing the IP address alone to the ISP has  
12 been enough to enable the ISP to identify the infringer. Providing the date and time further assists  
13 some ISPs in identifying infringers, especially ISPs that use "dynamic IP addressing" such that a single  
14 computer may be assigned different IP addresses at different times, including, for example, each time it  
15 logs into the Internet.<sup>1</sup> Once provided with the IP address, plus the date and time of the infringing  
16 activity, the infringer's ISP quickly and easily can identify the computer from which the infringement  
17 occurred (and the name and address of the subscriber that controls that computer), sometimes within a  
18 matter of minutes.

19  
20 17. Since 1998, the RIAA and others have used subpoenas thousands of times to  
21 learn the names, addresses, telephone numbers, and e-mail addresses of infringers for the purpose of  
22 bringing legal actions against those infringers. During a recent litigation with Verizon (an ISP)  
23 relating to the DMCA subpoena process, Verizon conceded that, as an alternative to the DMCA  
24 process, Plaintiffs could file "Doe" lawsuits and issue Rule 45 subpoenas to ISPs to obtain the true  
identities of infringing subscribers.

25  
26 1 ISPs own or are assigned certain blocks or ranges of IP addresses. An ISP assigns a particular  
27 IP address in its block or range to a subscriber when that subscriber goes "online."  
28

## **The RIAA's Identification of the Infringers in This Case**

18. In the ordinary course of investigating online copyright infringement, the RIAA became aware that Defendant was offering files for download on various P2P networks. The user-defined author and title of the files offered for download by Defendant suggested that many were copyrighted sound recordings being disseminated without the authorization of the copyright owners. The RIAA downloaded and listened to a representative sample of the music files being offered for download by Defendant and was able to confirm that the files Defendant was offering for distribution were illegal copies of sound recordings whose copyrights are owned by RIAA members. The RIAA also recorded the time and date at which the infringing activity was observed and the IP address assigned to Defendant at the time. See Complaint Exhibit A. The RIAA could not, however, determine the physical location of the users or their identities. The RIAA could determine that Defendant was using California State Univ - Monterey Bay internet service to distribute and make available for distribution the copyrighted files.

19. The RIAA also has collected a list of the files Defendant has made available for distribution to the public. This list shows thousands of files, many of which are sound recording (MP3) files that are owned by, or exclusively licensed to, Plaintiffs. Because of the voluminous nature of the list, and in an effort not to overburden the Court with paper, I have not attached to this Declaration that list. Such list will be made available to the Court upon request. Exhibit A to the Complaint includes the username of the infringer if that was available, the identification number assigned by MediaSentry for Defendant, and the number of audio files that were being shared by Defendant at the time that the RIAA's agent, MediaSentry, observed the infringing activity.

## The Importance of Expedited Discovery in This Case

20. Obtaining the identity of copyright infringers on an expedited basis is critical to stopping the piracy of the RIAA members' copyrighted works.

21. First, every day that copyrighted material is disseminated without the authorization of the copyright owner, the copyright owner is economically harmed. Prompt

identification of infringers is necessary in order for copyright owners to take quick action to stop unlawful dissemination of their works and minimize their economic losses.

22. Second, infringement often occurs with respect to sound recordings that have not yet been distributed publicly. Such infringement inflicts great harm on the initial market for new works. New recordings generally earn a significant portion of their revenue when they are first released, and copyright piracy during a recording's pre-release or early release period therefore deprives copyright owners of an important opportunity to reap the benefits of their labor.

23. Third, without expedited discovery, Plaintiffs have no way of serving Defendant with the complaint and summons in this case. Plaintiffs do not have Defendant's name or address, nor do they have an e-mail address for Defendant.

24. Fourth, and perhaps most critically, ISPs have different policies pertaining to the length of time they preserve “logs” which identify their users. ISPs keep log files of their user activities for only limited periods of time – which can range from as short as a few days, to a few months – before erasing the data they contain. If an ISP does not respond expeditiously to a discovery request, the identification information in the ISP’s logs may be erased, making it impossible for the ISP to determine the identity of the infringer and eliminating the copyright owner’s ability to take action to stop the infringement.

**[Remainder of page intentionally left blank.]**

1 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
2 and correct.

3 Executed on September 11, 2007 in Washington, D.C.

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6 Carlos Linares  
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**EXHIBIT B**

1 JEFFREY G. KNOWLES (State Bar # 129754)  
2 JULIA D. GREER (State Bar # 200479)  
2 ZUZANA J. SVIHRA (State Bar # 208671)  
3 COBLENTZ, PATCH, DUFFY & BASS, LLP  
3 One Ferry Building, Suite 200  
4 San Francisco, California 94111  
4 Telephone: (415) 391-4800  
5 Facsimile: (415) 989-1663

5 Attorneys for Plaintiffs  
6 MAVERICK RECORDING CO.; WARNER BROS.  
7 RECORDS INC.; ARISTA RECORDS, INC.; VIRGIN  
8 RECORDS AMERICA, INC.; UMG RECORDINGS, INC.;  
8 INTERSCOPE RECORDS; BMG MUSIC; SONY MUSIC  
8 ENTERTAINMENT INC.; ATLANTIC RECORDING  
9 CORP.; MOTOWN RECORD COMPANY, L.P.; and  
9 CAPITOL RECORDS, INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 MAVERICK RECORDING COMPANY, a  
14 California joint venture; WARNER BROS.  
14 RECORDS INC., a Delaware corporation;  
15 ARISTA RECORDS, INC., a Delaware  
15 corporation; VIRGIN RECORDS AMERICA,  
16 INC., a California corporation; UMG  
16 RECORDINGS, INC., a Delaware  
17 corporation; INTERSCOPE RECORDS, a  
17 California general partnership; BMG MUSIC,  
18 a New York general partnership; SONY  
18 MUSIC ENTERTAINMENT INC., a  
19 Delaware corporation; ATLANTIC  
19 RECORDING CORPORATION, a Delaware  
20 corporation; MOTOWN RECORD  
20 COMPANY, L.P., a California limited  
21 partnership; and CAPITOL RECORDS, INC.,  
21 a Delaware corporation,

22 Plaintiffs,

23 vs.

24 DOES 1 - 4,

25 Defendants.

CASE NO. C-04-1135 MMC

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MISCELLANEOUS  
ADMINISTRATIVE REQUEST FOR  
LEAVE TO TAKE IMMEDIATE  
DISCOVERY**

COBLENTZ, PATCH, DUFFY & BASS, LLP  
One Ferry Building, Suite 200, San Francisco, CA 94111-4213  
(415) 391-4800 • (415) 989-1663

1                   Upon the Miscellaneous Administrative Request of Plaintiffs For Leave To Take  
2 Immediate Discovery, the Declaration of Jonathan Whitehead and the exhibit thereto, Plaintiffs'  
3 Request for Judicial Notice, and the Declaration of Zuzana J. Svhra, it is hereby:

4                   ORDERED that Plaintiffs may serve immediate discovery on the University of  
5 California, Berkeley to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena  
6 that seeks information sufficient to identify each Doe Defendant, including the name, address,  
7 telephone number, e-mail address, and Media Access Control addresses for each Defendant.

8                   IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in  
9 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting  
10 Plaintiffs' rights under the Copyright Act.

11                   Without such discovery, Plaintiffs cannot identify the Doe Defendants, and thus  
12 cannot pursue their lawsuit to protect their copyrighted works from infringement.

13  
14                   Dated: April 28, 2004

James Larson U.S. Magistrate Judge

United States District Judge

COBLENTZ, PATCH, DIPPY & BASS, LLP  
One Ferry Building, Suite 200, San Francisco, CA 94111-4213  
(415) 391-4800 • (415) 989-1663

28

Case 2:07-cv-01641-LKK-EFB Document 8 Filed 08/23/2007 Page 1 of 3

1 Matthew Franklin Jaksa (CA State Bar No. 248072)  
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7 Email: matt.jaksa@hro.com

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Attorneys for Plaintiffs,  
ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION;  
BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA  
ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE  
RECORDS LLC; MAVERICK RECORDING COMPANY; MOTOWN  
RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG  
MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN  
RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ARISTA RECORDS LLC, a Delaware limited liability  
company; ATLANTIC RECORDING  
CORPORATION, a Delaware corporation; BMG  
MUSIC, a New York general partnership; CAPITOL  
RECORDS, INC., a Delaware corporation; ELEKTRA  
ENTERTAINMENT GROUP INC., a Delaware  
corporation; INTERSCOPE RECORDS, a California  
general partnership; LAFACE RECORDS LLC, a  
Delaware limited liability company; MAVERICK  
RECORDING COMPANY, a California joint venture;  
MOTOWN RECORD COMPANY, L.P., a California  
limited partnership; PRIORITY RECORDS LLC, a  
California limited liability company; SONY BMG  
MUSIC ENTERTAINMENT, a Delaware general  
partnership; UMG RECORDINGS, INC., a Delaware  
corporation; VIRGIN RECORDS AMERICA, INC., a  
California corporation; and WARNER BROS.  
RECORDS INC., a Delaware corporation,

Plaintiffs,

v.

DOES 1-16,

Defendants.

CASE NO. 07-1641 LKK EFB

**ORDER GRANTING EX PARTE  
APPLICATION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY**

1                   Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery,  
2 the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby  
3 ORDERED that Plaintiffs may serve immediate discovery on University of California, Davis to  
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that  
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone  
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant.

7                   Although parties must generally meet and confer prior to seeking expedited  
8 discovery, that requirement may be dispensed if good cause is shown. *See Fed. R. Civ. P. 26(d);*  
9 *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Here, the  
10 plaintiffs have presented evidence that the subpoena is necessary to identify the defendants, serve  
11 them with the complaint and summons, and prosecute their claims of copyright infringement. *See*  
12 *Gillespie v. Civletti*, 629 F.2d 637, 642 (9th Cir. 1980) ("where the identity of alleged defendants  
13 will not be known prior to the filing of a complaint . . . the plaintiff should be given an opportunity  
14 through discovery to identify the unknown defendants, unless it is clear that discovery would not  
15 uncover the identities, or that the complaint would be dismissed on other grounds."). Plaintiffs have  
16 further averred that records kept by internet service providers ("ISP") such as the University of  
17 California, Davis, are regularly destroyed, sometimes on a daily or weekly basis. *See* Linares  
18 Declaration, at ¶ 24. Based on the foregoing, the court finds that plaintiffs have demonstrated good  
19 cause for the expedited discovery.

20                   The disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B).  
21 Consistent with that provision, if and when the University of California, Davis is served with a  
22 subpoena, it shall, within five business days, give written notice to the subscribers whose identities  
23 are to be disclosed in response to the subpoena. Such written notice may be achieved by messages  
24 sent via electronic mail. If the University of California, Davis, and/or any defendant wishes to move  
25 to quash the subpoena, they shall do so before the return date of the subpoena.

Case 2:07-cv-01641-LKK-EFB Document 8 Filed 08/23/2007 Page 3 of 3

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in  
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting  
3 Plaintiffs' rights under the Copyright Act.

4  
5 Dated: August 23, 2007.

  
6 EDMUND F. BRENNAN  
7 UNITED STATES MAGISTRATE JUDGE  
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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*RM*  
BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; UMG RECORDINGS, INC., a Delaware corporation; ARISTA RECORDS LLC, a Delaware limited liability company; CAPITOL RECORDS, INC., a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; PRIORITY RECORDS LLC, a California limited liability company; ATLANTIC RECORDING CORPORATION, a Delaware corporation; FONOVIDA, INC., a California corporation; MAVERICK RECORDING COMPANY, a California joint venture; MOTOWN RECORD COMPANY, L.P., a California limited partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; BMG MUSIC, a New York general partnership; VIRGIN RECORDS AMERICA, INC., a California corporation; and LAFACE RECORDS LLC, a Delaware limited liability company,

Case No. *07CV 0581 BTM AJB*

*PROPOSED* ORDER GRANTING  
PLAINTIFFS' EX PARTE  
APPLICATION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY

Plaintiff,

v.

DOES 1 - 16,

Defendants.

Case 3:07-cv-0058-BTM-AJB Document 7 Filed 04/12/07 Page 2 of 2

Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery, the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on SBC Internet Services, Inc. to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that identify each Doe Defendant, including the name, current (and permanent) addresses and telephone numbers, e-mail addresses, and Media Access Control addresses for each Defendant. The disclosure of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

DATED:

4-19-07

By:

United States District Judge



04-CV-00960-JFP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

9 UMG RECORDINGS, INC., a Delaware  
10 corporation; ATLANTIC RECORDING  
11 CORPORATION, a Delaware corporation;  
12 WARNER BROS. RECORDS INC., a  
13 Delaware corporation; SONY MUSIC  
ENTERTAINMENT INC., a Delaware  
corporation; BMG MUSIC, a New York  
general partnership; and VIRGIN  
RECORDS AMERICA, INC., a California  
corporation.

No. C04-0960(a)-1

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY

**Plaintiffs,**

4

**DOES 1 - 2,**

**Defendants.**

19                   Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the  
20 supporting Memorandum of Law, and the declaration of Jonathan Whitchead and the  
21 exhibit thereto, it is hereby:

22 ORDERED that Plaintiffs may serve immediate discovery on Microsoft Corporation  
23 to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks  
24 information sufficient to identify each Doe Defendant, including the name, address,  
25 telephone number, e-mail address, and Media Access Control addresses for each Defendant.

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY

Page 1

**YARMUTH WILSDON CALFO PLLC**  
THE 10X TOWER  
126 FOURTH AVENUE, SUITE 2000  
SEATTLE, WA 98104  
T 206 516 3800 F 206 516 3808

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in  
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of  
3 protecting Plaintiffs' rights under the Copyright Act.

4  
5 Dated: May 14, 2007  
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M. S. Larson  
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United States District Judge

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY  
Page 2

YARMUTH WILSDON CALFO PLLC  
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FILED IN THE  
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EASTERN DISTRICT OF WASHINGTON

MAY 10 2004

JAMES R. LARSEN, CLERK  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LOUD RECORDS, LLC, a  
Delaware corporation; WARNER  
BROS. RECORDS INC., a  
Delaware corporation; ATLANTIC  
RECORDING CORPORATION, a  
Delaware corporation; VIRGIN  
RECORDS AMERICA, INC., a  
California corporation; PRIORITY  
RECORDS LLC, a California  
limited liability company;  
ELEKTRA ENTERTAINMENT  
GROUP INC., a Delaware  
corporation; BMG RECORDINGS,  
INC., a Delaware corporation;  
ARISTA RECORDS, INC., a  
Delaware corporation; BMG  
MUSIC, a New York general  
partnership; SONY MUSIC  
ENTERTAINMENT INC., a  
Delaware corporation; MAVERICK  
RECORDING COMPANY, a  
California joint venture; and  
CAPITOL RECORDS, INC., a  
Delaware corporation,

NO. CV-04-0134-RHW

ORDER GRANTING PLAINTIFFS'  
MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY

Plaintiffs,  
v.

DOES 1-5,

Defendants.

Before the Court is Plaintiffs' Motion for Leave to Take Immediate Discovery (Ct. Rec. 7). The Plaintiffs, members of the Recording Industry Association of America, Inc. ("RIAA"), have filed a complaint alleging that DOES

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY \* 1

1 1-5 illegally engaged in uploading and downloading copyrighted recordings  
2 through www.KaZaA.com, a peer to peer ("P2P") internet service (Ct. Rec. 1).  
3 While Plaintiffs are unable to identify the Does, they collected records of  
4 Defendants' Internet Protocol ("IP") address, the times the downloads or uploads  
5 took place, and information regarding the specific recordings that were  
6 downloaded or uploaded. The Plaintiffs were able to ascertain from Defendants'  
7 IP addresses that they were utilizing Gonzaga University as their Internet Service  
8 Provider ("ISP"). Plaintiffs seek statutory damages under 17 U.S.C. § 504(c),  
9 attorneys fees and costs pursuant to 17 U.S.C. § 505, and injunctive relief under  
10 17 U.S.C. §§ 502 and 503.

11 In their Motion for Leave to Take Immediate Discovery, the Plaintiffs seek  
12 leave to serve Gonzaga University, the ISP for Does 1-5, with a Rule 45 Subpoena  
13 Duces Tecum, requiring Gonzaga University to reveal the Defendant's names,  
14 addresses, email addresses, telephone number, and Media Access Control  
15 ("MAC") addresses.

16 The Ninth Circuit has held that "where the identity of alleged defendants  
17 will not be known prior to the filing of a complaint . . . the plaintiff should be  
18 given an opportunity through discovery to identify the unknown defendants,  
19 unless it is clear that discovery would not uncover the identities, or that the  
20 complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d  
21 637, 642 (9<sup>th</sup> Cir. 1980). Presumably, the discovery device anticipated by this  
22 ruling was Rule 45, under which a party may compel a nonparty to produce  
23 documents or other materials that could reveal the identities. *See Pennwalt Corp.*  
24 *v. Durand-Wayland, Inc.*, 708 F.2d 492 (9<sup>th</sup> Cir. 1983). The Court finds that this  
25 instance presents the very situation indicated by *Gillespie*. The Plaintiffs' case  
26 relies on the disclosure of the Does' identities, and those identities are likely  
27 discoverable from a third party.

28 Under Rule 26(d), Rule 45 subpoenas should not be served prior to a Rule  
ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY \* 2

1 26(f) conference unless the parties can show good cause. Fed. R. Civ. P. 26(d) ("a  
2 party may not seek discovery from any source before the parties have conferred as  
3 required by Rule 26(f) . . . . [u]nless the court upon motion . . . . orders  
4 otherwise"); *see Semitool, Inc. V. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-  
5 76 (N.D. Cal. 2002). The Plaintiffs have presented compelling evidence that the  
6 records kept by ISP providers of IP addresses are regularly destroyed. Thus, good  
7 cause has been shown.

8 Accordingly, **IT IS ORDERED** that:

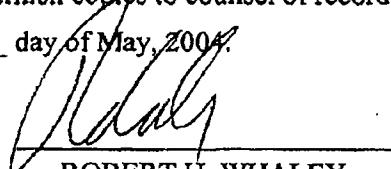
9 1. Plaintiffs' Motion for Leave to Take Immediate Discovery (Ct. Rec.  
10 7) is **GRANTED**.

11 2. Plaintiffs are **GIVEN LEAVE** to serve immediate discovery on  
12 Gonzaga University to obtain the identity of each Doe Defendant by serving a  
13 Rule 45 subpoena duces tecum that seeks each Doe Defendants' name, address,  
14 telephone number, email address, and Media Access Control address. As agreed  
15 by Plaintiffs, this information disclosed will be used solely for the purpose of  
16 protecting their rights under the copyright laws.

17 3. Plaintiffs are **ORDERED** to review Local Rule 7.1(g)(2) regarding the  
18 citation of unpublished decisions. All unpublished decisions cited to the Court  
19 have been disregarded.

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
21 enter this order and to furnish copies to counsel of record.

22 DATED this 10 day of May, 2004.



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25 ROBERT H. WHALEY  
United States District Judge  
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ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE  
IMMEDIATE DISCOVERY \* 3

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

## CIVIL MINUTES - GENERAL

Case No. CV 04-1962 ABC (AJWx)

Date: April 2, 2004

Title: LONDON-SIRE RECORDS, INC., et. al., v. DOES 1-4

PRESENT:

HON. ANDREW J. WISTRICH, MAGISTRATE JUDGE

Ysela Benavides

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None Present

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

ORDER REGARDING PLAINTIFFS' EX PARTE APPLICATION FOR LEAVE TO  
TAKE IMMEDIATE DISCOVERY

Plaintiffs are thirteen record companies who have filed a lawsuit against four unnamed "doe" defendants for alleged copyright infringement. Plaintiffs filed a motion for leave to take immediate discovery on March 23, 2004. [Notice of Ex Parte Application for Leave to Take Immediate Discovery ("Notice") filed March 23, 2004]. Plaintiffs allege that defendants, using an online peer-to-peer ("P2P") media distribution system, made available for distribution, and in fact distributed, copyrighted songs without license or other authority to do so, thereby infringing plaintiffs' copyrights. [See Memorandum of Law in Support of Ex Parte Application For Leave to Take Immediate Discovery ("Memorandum") filed March 23, 2004, at 2]. Plaintiffs have acquired the Internet Protocol ("IP") addresses assigned to each of the four defendants on the dates and times of the infringing activity. [Memorandum 2]. Using a public database, plaintiffs determined that the subject IP addresses belong to the University of Southern California ("USC"). [Memorandum 2-3]. As an Internet Service Provider ("ISP"), USC maintains a subscriber activity log indicating which of its subscribers were assigned the IP addresses in question on the relevant dates and times. [Memorandum 3]. In plaintiffs' experience, most ISPs maintain subscriber activity logs for only a short period of time before destroying the information contained in the logs. [Memorandum 3]. From the subscriber logs, USC can use the IP addresses and temporal information provided by plaintiffs to identify the true names, street addresses, phone numbers, e-mail addresses, and Media Access Control ("MAC") addresses for each defendant. [Memorandum 3]. Plaintiffs ask this Court to allow immediate issuance of a subpoena directing USC to produce defendants' names and the other personal information described above so that plaintiffs may contact defendants in an attempt to negotiate a resolution to plaintiffs' claims, or failing that, to add defendants as named parties to this litigation.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES--GENERAL

Generally, parties must meet and confer prior to seeking expedited discovery. See Fed. R. Civ. P. 26(f). That requirement, however, may be dispensed with if good cause is shown. See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Plaintiffs have shown good cause. The true identities of defendants are unknown to plaintiffs, and this litigation cannot proceed without discovery of defendants' true identities. [See Memorandum 7-9].

Subject to the following qualifications, plaintiffs' ex parte application for leave to take immediate discovery is granted.

If USC wishes to file a motion to quash the subpoena or to serve objections, it must do so before the return date of the subpoena, which shall be no less than twenty-one (21) days from the date of service of the subpoena. Among other things, USC may use this time to notify the subscribers in question.

USC shall preserve any subpoenaed information or materials pending compliance with the subpoena or resolution of any timely objection or motion to quash.

Plaintiffs must serve a copy of this order on USC when they serve the subpoena.

Any information disclosed to plaintiffs in response to the Rule 45 subpoena must be used by plaintiffs solely for the purpose of protecting plaintiffs' rights under the Copyright Act as set forth in the complaint.

IT IS SO ORDERED.

cc: Parties

MINUTES FORM 11  
CIVIL-GEN

Initials of Deputy Clerk \_\_\_\_\_

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Interscope Records, et al.,

Plaintiffs,

v.

Docs 1 - 4,

Defendants.

No. CV-04-131 TUC - JM

**ORDER**

Pending before the Court is the Plaintiffs' *ex parte* Motion for Leave to Take Immediate Discovery [Docket No. 2]. Upon consideration of the Motion and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit attached thereto, it is hereby:

ORDERED that Plaintiffs' Motion for Leave to Take Immediate Discovery [Docket No. 2] is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs may serve immediate discovery on the University of Arizona to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant;

IT IS FURTHER ORDERED that any information disclosed to Plaintiffs in response to the Rule 45 subpoena shall be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint;

JM

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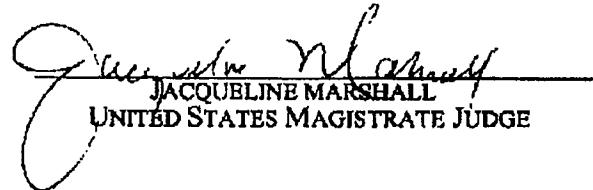
Received 03/30/2004 09:44AM in 02:06 on line [11] for RHARRIS \* Pg 3/3

1 IT IS FURTHER ORDERED that, if and when the University of Arizona is served  
2 with a subpoena, within five (5) business days thereof it shall give written notice, which can  
3 include use of e-mail, to the subscribers whose identities are to be disclosed in response to  
4 the subpoena. If the University of Arizona and/or any Defendant wishes to move to quash  
5 the subpoena, they shall do so before the return date of the subpoena, which shall be twenty-  
6 five (25) business days from the date of service;

7 IT IS FURTHER ORDERED that, if and when the University of Arizona is served  
8 with a subpoena, the University of Arizona shall preserve the data and information sought  
9 in the subpoena pending resolution of any timely filed motion to quash;

10 IT IS FURTHER ORDERED that counsel for Plaintiffs shall provide a copy of this  
11 Order to the University of Arizona when the subpoena is served.

12 Dated this 25 day of March, 2004.

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16 JACQUELINE MARSHALL  
17 UNITED STATES MAGISTRATE JUDGE  
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